



**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

# Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

MB Docket No. 06-189

## REPLY COMMENTS OF VERIZON<sup>1</sup> ON THE STATUS OF COMPETITION IN THE VIDEO MARKETPLACE

## I. INTRODUCTION

In its opening comments in this proceeding, Verizon described various obstacles that are blocking widespread video competition and urged the Commission to take steps to promote competitive entry. The comments filed by other participants in this proceeding confirm the need for the Commission to undertake such measures.

Verizon is making steady progress in rolling out its new and innovative video service known as “FiOS TV.” Verizon’s deployment of its advanced fiber-to-the-premises (“FTTP”) network has brought head-to-head wireline video competition to many communities, and along with it, lower prices and greater video choices for consumers. But as the experience of other commenters in this proceeding confirms, new entrants like Verizon face significant hurdles to broader video deployment that the Commission should address.

<sup>i</sup> The Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

## **II. VIDEO COMPETITION BENEFITS CONSUMERS**

As Verizon explained in its opening comments, wireline video competition delivers real benefits to consumers in terms of lower prices, wider choices, and better service.<sup>2</sup> Remarkably, some commenters take issue with this basic economic truism and argue that competition does not help consumers,<sup>3</sup> while the entrenched cable incumbents contend that competition has already arrived and that the Commission should do nothing further to foster new entry.<sup>4</sup> The record conclusively disproves both these claims.

To begin with, the data are clear that competition lowers video prices. As the Commission itself recently concluded in its report on cable prices in 2005, prices charged by cable operators in communities with a second wireline provider were 17% lower than in communities without competition.<sup>5</sup> Consistent with this finding, the Wall Street Journal recently reported that “cable companies that are facing the early waves of phone-company competition are showing the most restraint in raising prices,” noting that Cablevision, “which is facing threats from Verizon in much of its turf, has some of the lowest price increases in the business.”<sup>6</sup>

While many consumers are reaping the benefits of this new competitive entry, head-to-head wireline competition and the consumer benefits it delivers have reached only a small

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<sup>2</sup> Comments of Verizon on the Status of Competition in the Video Marketplace, MB Docket No. 06-189, at 8-9 (Nov. 29, 2006) (hereinafter “Verizon Comments on Competition”).

<sup>3</sup> See, e.g., Comments of the National Association of Telecommunications Officers and Advisors, et al., MB Docket No. 06-189, at 4 (Nov. 29, 2006).

<sup>4</sup> See, e.g., Comments of the National Cable & Telecommunications Association, MB Docket No. 06-189, at 8-10 (Nov. 29, 2006) (hereinafter “NCTA Comments”); Comments of Comcast Corporation, MB Docket No. 06-189, at 79 (Nov. 29, 2006) (hereinafter “Comcast Comments”).

<sup>5</sup> See News Release, “FCC Releases Report on 2005 Cable Industry Prices,” at 1 (Dec. 20, 2006), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-269116A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-269116A1.doc) (hereinafter “News Release on 2005 Cable Prices”).

<sup>6</sup> Sarmad Ali, “Cable Rate Increases Are Smallest in Years: Heightened Competition Offers Consumers Chance to Play One Provider Off Another; When to Bundle,” *Wall Street Journal*, at D5 (Dec. 7, 2006); see also Comments of Fiber-to-the-Home Council, MB Docket No. 06-189, at 11 (Nov. 29, 2006) (showing price decreases in certain markets where a competitive provider offers video service).

fraction of the nation's households. Notwithstanding the cable industry's claims to the contrary, in countless communities, incumbent cable providers enjoy a monopoly over wireline video services and consumers lack the benefits of wireline video competition. As the Commission recently noted, "[r]elatively few consumers have a second wireline alternative, such as an overbuild cable system."<sup>7</sup> And while Direct Broadcast Satellite ("DBS") operators offer an alternative to cable in some places, the Commission recently concluded that DBS competition does not constrain cable prices.<sup>8</sup> To bring the benefits of competition to consumers across the nation, the Commission must take steps to promote greater wireline competition.

### **III. THE COMMISSION SHOULD TAKE ACTION TO FACILITATE VIDEO COMPETITION**

In its opening comments in this proceeding, Verizon discussed a number of issues facing new competitive providers, including the local franchising system. On December 20, 2006, the Commission adopted rules regarding local cable franchising.<sup>9</sup> Accordingly, Verizon will focus its reply comments in this proceeding on the other barriers to entry facing new video providers that the Commission should address.

#### **A. The Commission Should Grant a Waiver of the Set-Top Box Integration Ban for New Entrants Using Innovative and Different Technology**

To help bring the benefits of video competition to consumers, the Commission should ensure that its rules applicable to navigation devices—and in particular, the ban on integrating

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<sup>7</sup> Twelfth Annual Report, *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 05-255, ¶ 9 (Mar. 13, 2006); see also Yale M. Braunstein, School of Information, University of California, Berkeley, *Expected Consumer Benefits from Wired Video Competition in California* at 2 (Apr. 2006) (stating that "[t]here is very little direct competition in the cable industry").

<sup>8</sup> See News Release on 2005 Cable Prices, *supra*, at 1.

<sup>9</sup> See News Release, "FCC Adopts Rules to Ensure Reasonable Franchising Process for New Video Market Entrants" (Dec. 20, 2006), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-269111A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-269111A1.doc).

navigation and security functions in a set-top box—do not stifle innovation or impede competitive entry. To achieve this objective, the Commission should quickly grant Verizon’s request for a waiver of the set-top box integration ban.

As Verizon has explained elsewhere, Verizon’s waiver request falls squarely within the scope of section 629(c) of the Cable Act, which requires the Commission to grant a waiver of its regulations when such waiver will “assist the development or introduction of a new or improved” video service.<sup>10</sup> Unlike cable incumbents who serve an embedded base of customers, Verizon is deploying a brand new service that is bringing—for the first time in many places—wireline competition to consumers. In addition, Verizon’s services rely on an advanced new technology that combines aspects of traditional digital cable technology with emerging IPTV technology in order to provide cutting-edge, interactive features and services as well as increased capacity.<sup>11</sup> And as explained in Verizon’s initial comments, granting Verizon a waiver will promote the development and deployment of competitive video services that are both new and improved.<sup>12</sup> Therefore, Verizon’s waiver request is precisely what was contemplated by the Act’s waiver provision.

At the same time, granting Verizon’s waiver request is wholly consistent with the objectives of section 629. Because of Verizon’s unique technology and relatively small current customer base when compared to the cable incumbents’ combined embedded base of tens of millions of subscribers, consumer electronics manufacturers are unlikely to commit the resources necessary to develop a set-top box unique to Verizon’s network specifications.<sup>13</sup> Granting

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<sup>10</sup> 47 U.S.C. § 549(c).

<sup>11</sup> See Verizon Comments on Competition, *supra*, at 4-7.

<sup>12</sup> *Id.* at 22-23.

<sup>13</sup> See *id.* at 23-24.

Verizon's waiver request therefore will not negatively affect competition in the market for retail navigation devices.

For these reasons, the Commission should grant Verizon's request for a waiver of the set-top box integration ban for new entrants using innovative, new technologies to deliver competitive video services.

**B. The Commission Should Take Action to Ensure that Residents of Multiple Dwelling Units Have Competitive Video Choice**

The record in this proceeding also supports the need for action regarding cable incumbents' efforts to block competition in multiple dwelling units ("MDUs") and other real estate developments. In its opening comments, Verizon described numerous instances in which exclusive access agreements between cable incumbents and MDU owners or managers prevented Verizon from offering residents its new competitive video service.<sup>14</sup> Other commenters in this proceeding have faced similar barriers.<sup>15</sup> For example, SureWest Communications reports that exclusive access arrangements have locked it out of fully half of the MDUs in its overbuild area.<sup>16</sup> Thus, the evidence is clear that exclusive access contracts are widespread and are being used to block competitive entry. To promote video competition, the Commission should prohibit, for a limited period of time, video providers from entering into new, or enforcing existing, exclusive access arrangements. This period could be extended by the Commission if it finds at the time of the sunset that market conditions justify a longer ban.

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<sup>14</sup> *Id.* at 25-28.

<sup>15</sup> See Comments of SureWest Communications, MB Docket No. 06-189, at 2-5 (Nov. 29, 2006) (hereinafter "SureWest Comments"); Comments of Broadband Service Providers (BSPs), MB Docket No. 06-189, at 15-17 (November 29, 2006) (hereinafter "BSP Comments").

<sup>16</sup> SureWest Comments, *supra*, at 3.

**C. The Commission Should Ensure that Technology Standards Spur Innovation and Facilitate Competitive Entry**

The Commission should also ensure that technology standards that are adopted in other contexts (such as for a downloadable conditional access system (“DCAS”) or two-way plug-and-play) do not disadvantage providers using newer or different technologies. Some commenters in this proceeding have advanced a series of principles for new technology standards,<sup>17</sup> while others have expressed support for the deployment of an OpenCable Application Platform (“OCAP”).<sup>18</sup> When the Commission considers such technology issues, it should adopt technology-neutral standards, rather than cable-centric ones, that allow all modes of delivering video services to compete fairly with traditional cable providers. As Verizon explained in its opening comments, cable-centric standards would impede competition and innovation and impose unnecessary costs on new entrants by forcing new competitors either to re-engineer their networks or to provide extra equipment to their customers.<sup>19</sup> Neutral standards, by contrast, will facilitate competitive entry by treating all video technologies alike.

Similarly, the Commission should not adopt a mandated OCAP policy. Because OCAP is a technology controlled by traditional cable incumbents, it should not be required of any service providers or consumer electronics manufacturers. Likewise, there is no need to incorporate OCAP functionality into DCAS technology. Verizon has elsewhere explained the principles that should guide an open DCAS solution.<sup>20</sup> In particular, Verizon has noted that

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<sup>17</sup> See, e.g., Comments of the Consumer Electronics Association, MB Docket No. 06-189, at 11-12 (Nov. 29, 2006) (discussing principles for two-way plug-and-play).

<sup>18</sup> See, e.g., Comments of Panasonic Corporation of North America, MB Docket No. 06-189, at 1 (Nov. 29, 2006) (advocating the deployment of OCAP technology).

<sup>19</sup> See Verizon Comments on Competition, *supra*, at 31-33.

<sup>20</sup> See Verizon’s Petition for Waiver of the Set-Top Box Integration Ban, 47 C.F.R. § 76.1204(a)(1), CS Docket No. 97-80, at 26-32 (July 10, 2006).

DCAS standards should be limited to the hardware and software necessary to conditional access support; they should not include cable-centric OCAP functionality that is not needed to implement DCAS.<sup>21</sup> Fundamentally, the Commission has no need to weigh in on the debate over OCAP and write support for this technology into its regulations. If consumer electronics manufacturers and cable providers wish to design and market devices that support OCAP, there are no barriers to them doing so.

**D. The Commission Should Address Programming Access Issues**

The Commission also should take steps to ensure that new providers have access to popular video programming. The comments filed in this proceeding make clear that access to such programming remains a problem for a wide range of new video entrants.<sup>22</sup> As Verizon and other commenters have explained, because incumbent cable providers continue to dominate overwhelmingly the market for video services, affiliated video programmers have both the continued incentive and the ability to deny rival video entrants the programming they need to attract customers.<sup>23</sup> The Commission should extend its rules barring exclusive programming contracts for a limited period of years so that competition can develop. These rules should then

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<sup>21</sup> Verizon is contributing to a standards-setting body—the ATIS IPTV Interoperability Forum—that may define standards that would allow consumer devices to attach to IP-based video networks and gain access to basic interactive services, such as interactive programming guides, video-on-demand, and pay-per-view, without requiring OCAP or any other specific middleware. This approach would allow operators and device manufacturers to independently develop differentiated applications over and beyond these basic interactive services. If a cable-centric OCAP approach were mandated, such a requirement could undermine these efforts.

<sup>22</sup> See, e.g., Comments of AT&T Inc., MB Docket No. 06-189, at 13-15 (Nov. 29, 2006); BSP Comments, *supra*, at 11-13.

<sup>23</sup> See Verizon Comments on Competition, *supra*, at 29-30; BSP Comments, *supra*, at 11 (stating that “[i]ncumbent cable operators enjoy significant vertical integration with video programmers that are positioned in the expanded analog tier of programming that has the highest viewership and, therefore, market value” and noting that there is “further expansion of vertical integration into sports programming through ownership of professional baseball, basketball and hockey franchises, other sports teams, and other related sports investments along with the continued ownership of Regional Sports Networks (RSNs)”).

sunset, absent affirmative Commission action extending the prohibition. With nascent wireline competition only just beginning to emerge, now is not the time to do away with these important protections.

**E. The Commission Need Not Address Issues Raised by Some Commenters That Do Not Relate to Video Competition**

While the Commission should take action to remove barriers to entry facing new video providers, it need not address the extraneous and non-cable related comments raised by some participants in this proceeding.

First, the cable industry argues that telecommunications providers are blocking competition for telephone services, but this claim is both irrelevant and incorrect.<sup>24</sup> The Commission's Notice of Inquiry in this proceeding requests comment and data on the state of *video* competition.<sup>25</sup> Cable's discussion of telephone regulation is thus well outside the scope of this proceeding and should be ignored. Regardless, cable's allegations of uncompetitive conduct are unfounded. Telecommunications services are robustly competitive, and cable companies have become a significant part of that competition.<sup>26</sup>

Second, comments on so-called "net neutrality" proposals are also beyond the scope of this proceeding.<sup>27</sup> A Commission proceeding on the state of video competition is no forum to consider regulations restricting the ways in which broadband providers do business.

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<sup>24</sup> NCTA Comments, *supra*, at 45-48.

<sup>25</sup> See, e.g., Notice of Inquiry, MB Docket No. 06-189, ¶ 1 (Oct. 20, 2006).

<sup>26</sup> "[In Third Quarter 2006] the rate at which telcos lose share of the voice market to cable accelerated. Telco line losses increased to 2.6 million versus 2.5 million in the prior year, while cable net adds increased to 0.8 million from 0.5 million. In percentage terms, the rate of telco line losses accelerated to 6.6% y/y (versus 6.4% last quarter and 5-6% throughout most of '05)." Jonathan Chaplin et al., JP Morgan, Telecom Service/Wireline, Third-Quarter 2006 Wrap, at 4 (Nov. 22, 2006).

<sup>27</sup> See, e.g., Comments of Center for Creative Voices in Media, MB Docket No. 06-189, Attachment at 64 (Nov. 28, 2006); Ex Parte Presentation Filed on behalf of Consumers Union, et al., MB Docket Nos. 05-311, 06-189, Attachment at 6-7 (Dec. 12, 2006).

Indeed, proposals to regulate the Internet are particularly misplaced in a proceeding like this one that is designed to *advance* the deployment of broadband networks that can carry video services. To date, the Commission and Congress have applied a “hands off” approach to the Internet, and it has flourished as a result. In particular, since the Commission recognized that Internet access services are information services that are not subject to traditional common carriage regulation, broadband investment and deployment have exploded. Intrusive Internet regulations advocated by “net neutrality” proponents would put the brakes on such investment by limiting network owners’ ability to innovate and differentiate their services. As an example, if the current “best efforts” Internet is frozen in place, broadband providers will not be able to support the next generation of Internet content, applications, and services, such as health care monitoring or gaming services, that will benefit from enhanced quality of service delivery or other differentiation that the current “best efforts” Internet was not designed to provide. Facing such constraints, network owners will be less willing to undertake the massive expenditures necessary to build advanced broadband infrastructure.

Visiting such consequences on broadband deployment is particularly unjustified given that there is no real problem for such regulations to address. There have been virtually no instances of network owners blocking lawful, unaffiliated content or services—a fact that is unsurprising given that broadband providers survive in the market only by being able to offer their customers access to *all* lawful content and applications—and the one problem (Madison River) was quickly resolved.

The goal of encouraging numerous and diverse information sources is best achieved not through intrusive rules that will choke off Internet innovation but through a federal policy that promotes investment in the construction of broadband networks and continued innovation by

Internet providers. The Commission can take steps to achieve that objective by removing barriers to entry facing new entrants in the video and broadband markets.

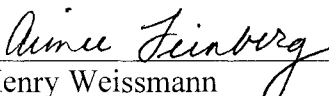
#### IV. CONCLUSION

Consistent with these comments and Verizon's opening comments in this proceeding, the Commission should take action to facilitate greater competition in the market for video services.

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December 29, 2006